No. 13258

IN THE

United States
Court of Appeals
For the Ninth Circuit

CLAUDE E. SPRIGGS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Upon Appeal from the United States District Court
District of Arizona

BRIEF FOR APPELLEE

FRANK E. FLYNN,
United States Attorney,
District of Arizona.

E. R. THURMAN,
Assistant U. S. Attorney.
Attorneys for Appellee.

McGREW PRINTERY, PHOENIX, ARIZONA

No. 13258

IN THE

United States
Court of Appeals
For the Ninth Circuit

CLAUDE E. SPRIGGS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Upon Appeal from the United States District Court
District of Arizona

BRIEF FOR APPELLEE

FRANK E. FLYNN,
United States Attorney,
District of Arizona.

E. R. THURMAN,
Assistant U. S. Attorney.
Attorneys for Appellee.

TABLE OF CONTENTS

Citations

Statutes

No. 13258

IN THE

United States
Court of Appeals
For the Ninth Circuit

CLAUDE E. SPRIGGS, *Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

APPELLEE'S OPENING BRIEF

JURISDICTIONAL MATTERS

Appellant, in his brief, has correctly stated the jurisdictional matters, and appellee agrees that the District Court had jurisdiction under Title 26 U.S.C.A., Paragraph 145(b), and this Court has jurisdiction under Title 28 U.S.C.A., Section 1291.

STATEMENT OF FACTS

The appellee agrees generally with the Statement of Facts as set forth in Appellant's Brief (App. B. 2-6), with the exception of the statement found at the top of page 4 of Appellant's Brief, wherein he states:

> "The Government's case and evidence thereon rested solely on the testimony of two Internal Revenue Agents, to-wit: Arthur R. Beals and

Lloyd M. Tucker. No other evidence or exhibits were adduced before the jury with the exception of appellant's income tax return for the year in question, to-wit: 1947 (T.R. 10). Testimony of the said agents concerning the allegations as covered by the government's Bill of Particulars as to Count III * * * which was derived solely from admissions, conversations and statements with the appellant (concerning the so-called Henshaw Road property) (T.R. 50-72 and 83-144)."

Appellee disagrees with said statement of appellant and calls attention to the fact that, in addition to the 1947 income tax return of appellant, two other income tax returns of the appellant were introduced in evidence, to-wit, appellant's income tax returns for the years 1944 and 1946 (T.R. 43-44), as well as the testimony of the Government witness, James A. Struckmeyer (T.R. 73-78), who testified in substance that all of the conversation that he had with appellant was that Struckmeyer was a damn fool to pay a tax, and that appellant didn't pay a tax, and there was no reason why the witness should (T.R. 76); and also the testimony of Marjorie Ross (T.R. 78-82). This witness testified in substance that she had heard Mr. Spriggs discuss income tax matters on occasions in the office of Mr. Struckmeyer at Phoenix, Arizona, and that during those conversations appellant stated that they did not have to be paid if you knew how to make your income tax return (T.R. 79, 80).

ISSUE INVOLVED

The issue involved on this appeal relating to items of Depreciation as set forth in the Government's Bill of Particulars, as supporting Count III of the Indictment is (1) Is the evidence sufficient to sustain the verdict

and judgment? This was raised by appellant's objection to the evidence (T.R. 124), appellant's motion for judgment of acquittal as to Count III of the Indictment (T.R. 172 and 177) and by motion for Judgment of Acquittal Notwithstanding the Verdict (T.R. 19). (App. B. 6).

SPECIFICATIONS OF ERROR

The appellant has set forth the following specifications of error in his brief (App. B. 7):

I.

The District Court erred in admitting the testimony over the objection of appellant (T.R. 124) of such witnesses' testimony of related conversations, admissions and statements, for this testimony was inadmissible for the reason there had been no showing of any crime haping been committed (T.R. 124): "There has been no corpus deliciti proved, there has been no connection of the defendant with it, therefore, his statements are inadmissible at this time until that is shown."

II.

The District Court erred in refusing to grant appellant's motion for judgment of acquittal at the end of the Government's case (T.R. 174) and at the end of all of the evidence adduced before the Jury (T.R. 177); upon the ground that the evidence was insufficient to sustain a conviction.

III.

The District Court erred in refusing to grant appellant's motion for judgment of acquittal notwithstanding the verdict (T.R. 21) upon the ground that the evidence was insufficient to sustain the verdict.

IV.

The District Court erred in refusing to grant appellant's motion for a new trial (T.R. 21) upon

the ground that the evidence was insufficient to sustain a conviction.

ARGUMENT

While appellant has set forth four specifications of error, it is obvious that there is only one issue involved, and that is in order to sustain the conviction there must be some evidence of corpus delicti independent of the alleged extrajudicial confessions and admissions of appellant, and appellee will confine his argument to that issue and Specification of Error No. I.

In analyzing the evidence which appellee believes sustains its position in this case that the Court committed no error in admitting the testimony of the Government's witnesses relating to the conversations, admissions and statements of the appellant, we believe that it is proper to call attention to the testimony of Government witness Arthur R. Beals (T.R. 93-96), wherein Mr. Beals testified as follows:

> "A. He identified the item in the depreciation schedule as cement, 1945, as being the Henshaw Road property, and when I inquired as to the cost which is listed there as $20,000.00, he stated that he didn't have detailed records of that, the cost of that property, but that it cost him at least that much and it was in the process of construction; he had purchased the propery and he went into the hole on that, that he had acquired it for a cost, oh, as I recall, it was $2,750.00, and at the time there were, I think, two rentals on it, two units. One was in condition for renting and the other, I believe was a garage, I am not just certain as to that, but, at least, this property had been acquired in '45 * * *" (T.R. 93-94)

"A. He stated that the property had been acquired in '45 and that through the year '46 he had made various additions to this property, and that as of the end of '46 he felt that he had invested in this property $20,000.00—a total of $20,000.00. I further asked Mr. Spriggs to account for the large investment in property as indicated on this return, noting that earlier returns had—" (T.R. 94)

"A. Yes. I have two items listed on the '47 return; one acquired in '45, Henshaw, $20,000.00, and another 'cement' listed at $20,000.00 and he stated, or he said that both of those items were Henshaw Road property, that the second $20,000.00 item there represented investment, additional investment which he had made in the year '46 making a total of $40,000.00 in the Henshaw Road property at the end of '40—

"The Court (Interrupting): 6.

"A. '47. This was the '47 return which listed the two items of $20,000.00, making a total of $40,000.00 in the Henshaw Road property as of the end of '47. Now, Mr. Spriggs, toward the end of our discussion and after I had stated to him that at the end of '47 his investments there had increased something like over $60,000.00, I asked him where the funds, or rather, he, through our discussion, he made the statement, well, he says, 'You are going to ask me where I got that money?', and I said, 'You are right, Mr. Spriggs; where did you get that money?,' and he said, 'Well, look at my returns; it is all on there,' but I searched the return and could not find it." (T.R. 96)

An analysis of Mr. Beal's testimony above set forth shows conclusively that the statements of appellant are certainly not admissions of guilt or confessions made by appellant to Mr. Beals, but are merely statements

showing knowledge pertinent to the issue of guilt and may be considered because the statements were for a purpose of appellant's own rather than an admission, for they say, in substance, that there is nothing wrong with appellant's income tax returns as everything is reflected therein.

If appellee is correct in its analysis of this evidence, certainly it would be considered proper to go to the jury, and would be an addition and tend to prove the corpus delicit. In support thereof we cite

Gros v. United States,
138 Fed. 2nd 260, at 262 (9th Cir.)

The 1947 income tax return cannot, alone, be considered evidence in support of the proof of the corpus delicti. However, when taken into consideration with the appellant's income tax return for 1946, Schedule F, Explanation of Deduction and Depreciation, we find that the Henshaw Road property therein, under item 3, Cost, is set forth as $20,000.00 with the depreciation allowable under item 9 entered as $1750.00, and then referring to the like schedule in appellant's 1947 income tax return, we find the same property is placed down twice in item 3, Cost, in items of $20,000.00 each, making a total of $40,000.00, and the depreciation entered under item 9 on said property in the amount of two figures of $2,000.00 each, or making a total of $4,000.00, and then considering the small amount of income set forth in the two respective income tax returns, all of which certainly lays a basis to cause one to question the truth of the figures on depreciation. This may be slight evidence, but evidence it is, and tends to establish the corpus delicti separate and distinct from any statements or so-called admissions or confessions made by

the appellant to the officers of the Internal Revenue department.

The Government takes the position that it was necessary for it to prove beyond a reasonable doubt the wilfullness of the appellant to defeat and evade a part of his income tax for the year 1947, and this was done by the introduction of the evidence of the Government witnesses James A. Struckmeyer (T.R. 73-77) and Marjorie Ross (T.R. 78-80), and approved by the trial court (T.R. 75).

Counsel for appellee at this point believes it advisable to call the attention of this Honorable Court to the testimony of Mr. Tucker, commencing about the middle of page 136 of the Transcript of Record and continuing to the top of page 137, as follows:

> "A. I asked Mr. Spriggs if the facts contained on that statement were not correct, and he stated that his increase in net worth was too high, so I questioned him with respect to each of the items contained on that statement, the assets, the depreciable assets, and the liabilities. He agreed that they were all correct with the exception of the cost which he had allocated to the Henshaw Road property. I stated that that was a matter which we had discussed on previous occasions and that up until that time we had been in agreement on it. I asked him why on that date that he stated that the cost which he had allocated to that property was not correct, and he stated—he said, 'Well,' he says, 'I will tell you exactly what happened.' He says, 'If you ever say that I told you, I will say you are a damn liar.' He said, 'When I went to file my'—he says, 'When I went to file my 1947 income tax return,' he said, 'I saw that I was going to have to pay some tax, so,' he says, 'I just added another $10,000 to the cost of it to put me in a no tax bracket.' "

Counsel for the Government does not believe that the statement made by appellant to Mr. Tucker, as set forth in the above testimony, is an admission of guilt, especially when he added to his statement, "If you ever say that I told you, I will say you are a damn liar." Certainly it is obvious that appellant did not at that time intend to be bound by any admission that he made, and, therefore, it certainly lacks the elements of a confession or an admission of guilt.

This Honorable Court has held that it is unnecessary to make full proof of the corpus delicti independently of the defendant's confession.

Wynkoop v. United States,
22 Fed. 2nd 799 (9th Cir.)
Wiggins v. United States,
64 Fed. 2nd 950 (9th Cir.)
Pearlman v. United States,
10 Fed. 2nd 460 (9th Cir.)

This Court has also further held that the corroborative evidence need not independently establish the corpus delicti beyond a reasonable doubt, and that it is sufficient if such evidence, when considered in connection with the confession or admission, satisfies the jury beyond a reasonable doubt that the offense was, in fact, committed.

Iva Ikuko Toguri D'Aquino v. United States
192 Fed. 2nd 338, at 357 (9th Cir.)

It is the position of the appellee that there was sufficient evidence of a corroborative nature when considered in connection with the statements, confessions or admissions of the appellant to satisfy the jury beyond a reasonable doubt that the offense charged in this case was, in fact, committed.

SUMMARY

1. The court did not err in admitting testimony of the Government's witnesses Arthur R. Beals and Lloyd M. Tucker which related to the conversations, admissions and statements of the appellant, for the reason that there was sufficient corroborative evidence of the corpus delicti as a foundation for its admissibility.

2. Appellant had a fair and impartial trial, and the verdict and judgment should be affirmed.

Respectfully submitted,

FRANK E. FLYNN,
United States Attorney,
District of Arizona

E. R. THURMAN,
Assistant U. S. Attorney.
Attorneys for Appellee.